

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT
17.74.401 through 17.74.404 pertaining )	
to the asbestos control program fees )	(ASBESTOS CONTROL)

TO: All Concerned Persons

1. On July 5, 2007, the Department of Environmental Quality published MAR Notice No. 17-261 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 942, 2007 Montana Administrative Register, issue number 13.

2. The department has amended the rules exactly as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: A commentor stated that the department should charge a flat fee for all project permits based on the average cost incurred for the issuance and administration of all project permits.

RESPONSE: The department acknowledges the comment. However, the department notes that the proposed new project permit fee would be commensurate with the department's costs for issuance and administration of a project permit as required by 75-2-503, MCA.

If the department were to adopt the commentor's suggested flat fee for all project permits, the project permit fee for a small project (\$501 contract volume) would increase from \$91 to \$624, and the fee for a large project (greater than \$375,000 contract volume) would decrease from \$20,000 to \$624. The \$624 flat fee was calculated by dividing the asbestos control program's (program) fiscal year (FY) 2006 appropriations for the issuance and administration of project permits by the total number of paid project permits issued in FY 2006. With the suggested flat fee, a contractor conducting a small project would pay more than the department's costs for issuance and administration of its project permit, and a contractor conducting a large project would pay less than the department's costs for issuance and administration of its project permit. This is because the program spends more time on the issuance and administration of a project permit for a large project than a small project. Therefore, the suggested flat fee for project permits would not be commensurate with the department's costs for issuance and administration of a permit.

COMMENT NO. 2: A commentor stated that the project permit fee should be divided into two categories. The first category would include all asbestos projects that include encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, and the ultimate

transportation and disposal. The second category would include only the transportation and disposal of asbestos.

RESPONSE: The department agrees that there may be some value in creating project permit fee categories based on the nature of the project. However, the inclusion of the suggested project permit fee categories in ARM 17.74.401 is outside the scope of the rule notice and would require another rulemaking. The department will research the idea and may consider it in a future rulemaking.

COMMENT NO. 3: A commentor stated that it is unreasonable and unjustifiable to assess 10% of the contract volume as the project permit fee. For example, under the current project permit fee schedule, a project with a contract volume of \$3000 would be assessed a fee of \$91, and under the proposed fee schedule the fee assessed would be \$300. The new project permit fee schedule is unjustifiable because it is not commensurate with the department's costs for issuance and administration of the permits.

RESPONSE: In general, the larger the project, as measured by contract volume, the more time the program spends on issuance and administration of a project permit. The department believes its new project permit fee of 10% of contract volume will be commensurate with the department's costs for issuance and administration of the permits. The department believes the new project permit fee will adequately contribute to funding the program, and is more equitable for all sizes of projects.

For example, based on the mid-point of the contract volume ranges in the existing project permit fee schedule, the department currently assesses a fee of 5.2% of contract volume for the mid-point of the lowest contract volume range (\$501 - \$3000). The fee percentages decrease as the contract volumes increase to the mid-point of the \$100,001 - \$250,000 contract volume range (large projects). The fee percentage is 3.7% for the mid-point of this range. The fee percentage for the mid-point of the highest range (\$250,000 - \$375,000) is 4.3%. Therefore, a small project is assessed a higher percentage of contract volume, than a larger project. The existing project permit fee schedule is not equitable for all sizes of projects.

Also, the department believes that the existing project permit fee schedule is not commensurate with the department's costs for issuance and administration of the permits. This is because the program spends more time on the issuance and administration (which includes inspections) of a project permit for a large project than for a small project.

COMMENT NO. 4: A commentor stated that the justification for reducing the course audit fees is flawed. The department should not concern itself with what a course provider can or can't afford, then completely disregard what a building owner, contractor, or annual permit holder can or can't afford in asbestos-related fees.

RESPONSE: The department is concerned with the impact of fees on all regulated persons. The proposed fees are set at the minimum amount necessary to meet the requirements of 75-2-503, MCA. Pursuant to ARM 17.74.364, the department may audit an approved training course and, subsequent to the audit, the course provider shall pay the audit fee. In the past the department has been reluctant to conduct audits because of the financial burden of the audit fee on course

providers. Audit fees often cost significantly more than any profit the course providers expect to make on a course. The proposed lower audit fee would allow the department to conduct more audits.

COMMENT NO. 5: A commentor stated that this rulemaking proposal does not address the other reasons why the department is experiencing a budget shortfall. These reasons include homeowner exclusions, unclear rules and regulations, the lack of an annual asbestos transport and disposal permit, and reciprocity for out-of-state workers.

RESPONSE: The department agrees that there may be some other avenues for funding the asbestos control program in the future. However, the inclusion of the revisions necessary to implement any of the suggested funding ideas cannot be accomplished in this rulemaking. The suggested revisions are outside the scope of the rule notice and would require another rulemaking. The department will research the ideas and may consider them in a future rulemaking.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ David Rusoff  
DAVID RUSOFF  
Rule Reviewer

By: /s/ Richard H. Opper  
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, November 13, 2007.